

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
:
VALERITAS HOLDINGS, INC., *et al.*,¹ : Case No. 20-10290 (LSS)
:
Debtors. : (Jointly Administered)
:
-----X Re: D.I. 25, 105, 113, 115, 119, 121

**CERTIFICATION OF COUNSEL REGARDING ORDER (A) ESTABLISHING
BIDDING PROCEDURES; (B) APPROVING BID PROTECTIONS;
(C) ESTABLISHING PROCEDURES RELATING TO ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES, INCLUDING NOTICE OF PROPOSED CURE AMOUNTS; (D) APPROVING
FORM AND MANNER OF NOTICE; (E) SCHEDULING A HEARING TO CONSIDER
ANY PROPOSED SALE; AND (F) GRANTING CERTAIN RELATED RELIEF**

I, Maris J. Kandestin, an attorney with DLA Piper LLP (US), as proposed counsel to Valeritas Holdings, Inc. and its affiliated debtors (collectively, the “Debtors”) in the above-captioned chapter 11 cases, hereby certify as follows:

1. On February 10, 2020, the Debtors filed the *Motion of the Debtors for Entry of Orders (I)(A) Establishing Bidding Procedures; (B) Approving Bid Protections; (C) Establishing Procedures Relating to Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (D) Approving Form and Manner of Notice; (E) Scheduling a Hearing to Consider Any Proposed Sale; and (F) Granting Certain Related Relief; and (II)(A) Approving a Sale; (B) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (C) Granting*

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.



Related Relief [D.I. 25] (the “Bid Procedures Motion”)² with the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On February 28, 2020, the Official Committee of Unsecured Creditors (the “Committee”) filed the *Objection of the Official Committee of Unsecured Creditors to Motion of Debtors for Entry of Orders (I) (A) Establishing Bidding Procedures; (B) Approving Bid Protections; (C) Establishing Procedures Relating to Assumption and Assignment of Certain Executory Contracts Unexpired Leases, Including Notice of Proposed Cure Amounts; (D) Approving Form and Manner of Notice; (E) Scheduling a Hearing to Consider Any Proposed Sale; and (F) Granting Certain Related Relief; and (II) (A) Approving a Sale; (B) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (C) Granting Related Relief* [D.I. 105] (the “Objection”).

3. On March 3, 2020, the Debtors filed the *Motion of the Debtors for Entry of an Order Granting (I) Leave to File Late Reply and (II) Related Relief* [D.I. 113], which attached as an exhibit the Debtors’ reply to the Objection (the “Reply”). Attached as an exhibit to the Reply was a revised version of the form of order granting the Bid Procedures Motion and related exhibits.

4. On March 4, 2020, the DIP Lender and the Prepetition Secured Lenders each filed a joinder to the Reply [D.I. 115 and 199, respectively].

5. On March 5, 2020, the Debtors filed the *Notice of Filing Revised Bid Procedures Order and Exhibits* [D.I. 121] (the “Notice of Revised Bid Procedures”), attaching a further revised form of order granting the Bid Procedures Motion and related exhibits.

² Capitalized terms not otherwise defined herein shall have the meanings given to those terms in the Bid Procedures Motion.

6. On March 6, 2020, the Court conducted a hearing (the “Bid Procedures Hearing”) to consider the relief requested in the Bid Procedures Motion. At the conclusion of the Bid Procedures Hearing, the Court granted the relief requested in the Bid Procedures Motion as it related to the bidding, sale, and notice procedures, subject to the Debtors’ submission of a revised form of order under certification of counsel reflecting the Court’s rulings on the record at the Bid Procedures Hearing.

7. Accordingly, the Debtors have prepared a further revised proposed form of order (the “Revised Proposed Order”), granting the relief requested in the Bid Procedures Motion, as modified by the Court on the record at the Bid Procedures Hearing. The Debtors circulated the Revised Proposed Order to the respective counsel for each of the following parties: (a) the Office of the United States Trustee for Region 3, (b) the DIP Lender, (c) the Prepetition Secured Agent, (d) the Stalking Horse Bidder, and (e) the Committee Official Committee of Unsecured Creditors, none of which indicated that they had an objection to the Court’s entry of the Revised Proposed Order. Attached as **Exhibit A** is a copy of the Revised Proposed Order. For the convenience of the Court and parties in interest, attached as **Exhibit B** is a redline of the Revised Proposed Order marked against the proposed form of order, attached as an exhibit to the Notice of Revised Bid Procedures [D.I. 121].

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WHEREFORE, the Debtors respectfully request that the Court enter the Revised Proposed Order, attached hereto as **Exhibit A**, granting the relief requested, and grant such other and further relief as the Court may deem just and proper.

Dated: March 6, 2020
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Maris J. Kandestin

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-and-

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Proposed Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11

:

VALERITAS HOLDINGS, INC., *et al.*,¹ : Case No. 20-10290 (LSS)

:

Debtors. : (Jointly Administered)

-----X

**NOTICE OF PROPOSED ASSUMPTION OR ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS**

PLEASE TAKE NOTICE REGARDING THE FOLLOWING:

1. On February 9, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), each filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On February 9, 2020, the Debtors entered into an Asset Purchase Agreement (the “Stalking Horse APA”) with Zealand Pharma A/S (“Zealand”), by which Zealand or a designee of Zealand as permitted pursuant to the Stalking Horse APA (collectively, the “Stalking Horse Bidder”) will acquire all or substantially all of the Debtors’ assets (the “Assets”).

3. On February 10, 2020, in connection with the proposed sale of substantially all of the Debtors’ Assets pursuant to section 363 of the Bankruptcy Code (the “Sale”) to the Stalking Horse Bidder or other successful bidder (the “Successful Bidder”) at an auction (the “Auction”), the Debtors filed a motion (the “Motion”),² seeking, among other things, (i) entry of an order (the “Bidding Procedures Order”) approving the bidding procedures (the “Bidding Procedures”) governing the solicitation of higher or better Bids; (ii) establishing procedures for the assumption or assignment and assumption of executory contracts; (iii) scheduling a Sale Hearing; and (iv) granting related relief [D.I. 25].

4. Pursuant to the Sale and the APA, the Debtors will assume the Designated Contracts (as defined herein) pursuant to and upon the consummation of the Sale with the Successful Bidder continuing to perform under the applicable Designated Contract. The Debtors will assume and assign the Designated Contracts to the applicable Successful Bidder, pursuant to the Sale Order to be entered approving the Sale following the Sale Hearing.

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion or the Bidding Procedures Order, as applicable.

5. Pursuant to the Bidding Procedures Order [D.I. ___], the Debtors hereby provide notice that they are seeking to assume and assign to the Successful Bidder the executory contracts or unexpired leases (each, a “Designated Contract”) listed on Exhibit A attached hereto.

6. On the closing date of the Sale, or as soon thereafter as practicable, the Successful Bidder or the Debtors (as applicable), will pay you the Debtors’ good-faith estimates of the amount of the required cure payments, as set forth on Exhibit A (the “Cure Amount”). The payment of your Cure Amount by the Successful Bidder or the Debtors, as applicable, shall (i) constitute a cure of all defaults existing under your executory contract(s) or expired lease(s), as applicable, and (ii) compensate you for any actual pecuniary loss to such counterparty resulting from such default.

7. The inclusion of an executory contract or unexpired lease as a Designated Contract on Exhibit A is not a guarantee that such contract or unexpired lease will ultimately be assumed and assigned. Should it be determined that the Designated Contract to which you are a party will not be assumed and assigned, you will be notified in writing of such decision.

8. Although the Debtors intend to make a good-faith effort to identify all Designated Contracts that may be assumed and assigned in connection with a Sale, the Debtors may discover that certain executory contracts were inadvertently omitted from the Designated Contracts list, or the Successful Bidder may identify additional executory contracts that they desire to assume and assign in connection with the Sale. Accordingly, the Debtors reserve the right at any time after the Assumption and Assignment Service Deadline and before the date that is two (2) days prior to the Sale Hearing, to (i) supplement the list of Designated Contracts with previously omitted executory contracts, (ii) remove Designated Contracts from the list of executory contracts ultimately selected as Designated Contracts that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated Cure Amount associated with any Designated Contracts. In the event the Debtors exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of contract assumption and assignment (a “Supplemental Assumption Notice”) on each of the counterparties to such Designated Contracts and their counsel of record, if any; *provided, however*, the Debtors may not add an executory contract to the list of Designated Contracts that has been previously rejected by the Debtors by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Designated Contracts as was included in the Contract Assumption Notice.

9. The Debtors may remove any executory contract or unexpired lease, as applicable, to be assumed by the Debtors and assigned to the Successful Bidder (the “Eliminated Agreements”) through and including the Designation Deadline. The Debtors shall, as soon as reasonably practicable after identifying an Eliminated Agreement, serve a notice on each of the impacted counterparties and their counsel of record, if any, indicating that the Debtors no longer intend to assume and assign the counterparty’s executory contract or unexpired lease to the Successful Bidder in connection with the Sale.

10. Objections, if any, to the Motion and the sale of the Assets to a Successful Bidder, with the exception of objections solely related to the identity of the Successful Bidder, any changes to the form APA, and adequate assurance of future performance by the Successful Bidder,

as well as objections to the conduct of the Auction, the proposed Sale to the Successful Bidder, and the ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance, with respect to the assumption and assignment of any Designated Contracts, must be made prior to or at the hearing scheduled for **March 20, 2020, at 10:00 a.m. (EDT)**. In each case, all objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court no later than the applicable objection deadline and served on (i) proposed counsel to the Debtors and (ii) counsel to the Stalking Horse Bidder. *Any party who fails to timely file an objection to entry of the Sale Order (i) shall be forever barred from objecting thereto, (ii) shall be deemed to consent to the sale of the Assets as approved by any Sale Order, and (iii) shall be deemed to “consent” for purposes of Section 363(f)(2) of the Bankruptcy Code.*

11. Objections, if any, to the proposed assumption and assignment or the Cure Amount proposed with respect thereto *must* (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served upon counsel to the Debtors and counsel to the Stalking Horse Bidder so as to be actually received on or at the hearing scheduled for **March 20, 2020, at 10:00 a.m. (EDT)**. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment solely with respect to the adequate assurance of future payment from the Successful Bidder (the “Buyer Identity Objection Deadline”) shall be prior to or at the hearing scheduled for **March 20, 2020, at 10:00 a.m. (EDT)**.³

12. The objection deadline for counterparties who receive a Supplemental Assumption Notice (“Supplemental Counterparties”) shall be the earlier of: (a) 10:00 a.m. (EDT) on the date that is five (5) days from filing and service of such Supplemental Assumption Notice and (b) the Sale Hearing. Notwithstanding the foregoing, the Buyer Identity Objection Deadline shall not be extended for Supplemental Counterparties.

13. If an objection to the Cure Amount or assumption and assignment is timely filed and not resolved by the parties, a hearing with respect to the objection will take place before the Honorable Laurie Selber Silverstein of the United States Bankruptcy Court for the District of Delaware, 824 Market St. N., 6th Floor, Courtroom #2, Wilmington, Delaware 19801 at the Sale Hearing to be held **on March 20, 2020, at 10:00 a.m. (EDT)**. A hearing regarding the Cure Amount, if any, may be continued at the discretion of the Debtors and the Successful Bidder until after the closing.

³ The Debtors will file, as promptly as possible after the close of the Auction, but, in any event by March 18, 2020, at 12:00 p.m. (EDT), a Notice of Successful Bidder (as defined in the Motion). The Debtors will also transmit the Notice of Successful Bidder via email and fax, where available, to the counterparties to the Designated Contracts and post the Notice of Successful Bidder on the claims and noticing agent’s case-dedicated website at <http://www.kccllc.net/valeritas>.

14. If there is a timely objection to a Cure Amount, any undisputed portion of such Cure Amount will be paid in accordance with these Assumption Procedures and such payment will not be withheld pending resolution of any such objection; *provided that* the Stalking Horse Bidder shall be obligated only to pay the Cure Amounts as set forth in the Stalking Horse APA.

15. Any party that does not timely object to the Cure Amount, the proposed assumption and assignment of a Designated Contract or Additional Designated Contract listed on the Contract Assumption Notice or Supplemental Assumption Notice, or any Sale is deemed to have consented to (a) such Cure Amount, (b) the assumption and assignment of such Designated Contract or Additional Designated Contract (including the adequate assurance of future payment), (c) the related relief requested in the Motion, and (d) the Sale. **Such party shall be forever barred and estopped from objecting to the Cure Amount, the assumption and assignment of the Designated Contract, or Additional Designated Contract, adequate assurance of future performance, the relief requested in the Motion, and the Sale, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Successful Bidder and/or the Debtors, for purposes of section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other amounts against the Debtors or the Successful Bidder, as applicable, with respect to such party's Designated Contract or Additional Designated Contract.**

16. After the Auction (if any), the Debtors will file a notice that identifies the Successful Bidder. The Debtors and/or any Successful Bidder reserve all of their rights, claims and causes of action with respect to the contracts and agreements listed on **Exhibit A** hereto. Notwithstanding anything to the contrary herein or in the Motion, the Bidding Procedures, or the Bidding Procedures Order, service of this Contract Assumption Notice does not constitute an admission that any contract is an executory contract, that any lease is unexpired, or that the stated Cure Amount related to any executory contract or unexpired lease constitutes a claim against the Debtors or establishes any rights against any Successful Bidder (all rights with respect thereto being expressly reserved); *provided further*, that, following the Auction, the Successful Bidder or the Debtors, as applicable, reserve all rights to assert that any Cure Amount is lower than the Debtors' estimate, subject to each counterparty's opportunity to object.

17. **The inclusion of a contract or unexpired lease on this Contract Assumption Notice is not a guarantee that such contract or unexpired lease will ultimately be assumed and assigned.**

Dated: March __, 2020
Wilmington, Delaware

DLA PIPER LLP (US)

/s/ DRAFT

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– and –

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*Proposed Counsel to Debtors and Debtors in
Possession*

EXHIBIT B

Redline

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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	: Chapter 11
In re:	:
	: Case No. 20-10290 (LSS)
VALERITAS HOLDINGS, INC., <i>et al.</i> , ¹	:
	: (Jointly Administered)
Debtors.	:
	X Re: D.I. 25

ORDER (A) ESTABLISHING BIDDING PROCEDURES; (B) APPROVING BID PROTECTIONS; (C) ESTABLISHING PROCEDURES RELATING TO ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, INCLUDING NOTICE OF PROPOSED CURE AMOUNTS; (D) APPROVING FORM AND MANNER OF NOTICE; (E) SCHEDULING A HEARING TO CONSIDER ANY PROPOSED SALE; AND (F) GRANTING CERTAIN RELATED RELIEF

This matter coming before the court upon the *Motion of Debtors for Entry of Orders (I)(A) Establishing Bidding Procedures; (B) Approving Bid Protections; (C) Establishing Procedures Relating to Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (D) Approving Form and Manner of Notice; (E) Scheduling a Hearing to Consider any Proposed Sale; and (F) Granting Certain Related Relief; and (II)(A) Approving a Sale; (B) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (C) Granting Related Relief* (the "Motion"),¹ filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a)

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

¹ Capitalized terms used but not otherwise defined in this Order shall have the meanings ascribed to them in the Motion or Bidding Procedures (as defined herein), as applicable.

authorizing and approving the bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”) in connection with a Sale, (b) approving the Bid Protections, (c) approving the form and manner of notice of any Auction and any Sale Hearing, (d) scheduling the Sale Hearing, if applicable, and setting other related dates and deadlines, attached hereto as **Exhibit 2**, (e) establishing procedures for the assumption and assignment of contracts and noticing of related Cure Amounts, and (f) granting related relief all as further described in the Motion; and upon consideration of the First Day Declaration, the Murphy Declaration, and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion, the First Day Declaration, and the Bock Declaration establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

A. Bidding Procedures. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures attached hereto as Exhibit 1, which are fair, reasonable, and appropriate under the circumstances and designed to achieve the highest or otherwise best offer and to maximize the value of the Debtors' estates. The Bidding Procedures shall govern the submission, receipt, and analysis of all bids relating to the Sale and any party desiring to submit a bid shall do so strictly in accordance with the terms of the Bidding Procedures and this Order.

B. Sale Notice. The notice, substantially in the form attached hereto as Exhibit 3, provided by the Debtors regarding the Sale, the Auction, and the Sale Hearing (the "Sale Notice") is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures and certain dates and deadlines related thereto; (iii) the objection deadline for the Motion and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the assets subject to any Sale; (v) instructions for promptly obtaining a copy of the form APA; (vi) representations describing any Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds; (vii) notice of the proposed assumption of the Designated Contracts by the Debtors and assignment to, the Successful Bidder, and the right, procedures, and deadlines for objecting thereto, and no other or further notice of any Sale shall be required.

C. Assumption and Assignment Procedures. The Motion and the Contract Assumption Notice (as defined herein) are reasonably calculated to provide counterparties to the

Designated Contracts with proper notice of the intended assumption and assignment of their executory contracts, any Cure Amounts (as defined herein), and the Assumption Procedures (as defined herein), and are appropriate.

D. Other Findings. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

I. Important Dates and Deadlines

2. **Sale Hearing.** The Sale Hearing will commence on **March 20, 2020, at 10:00 a.m., EDT**, before the Honorable Laurie Selber Silverstein of the United States Bankruptcy Court for the District of Delaware, 824 Market St. N., 6th Floor, Courtroom #2, Wilmington, Delaware 19801. The Sale Hearing may be adjourned by the Debtors in consultation with the Consultation Parties without further notice other than by announcement in open Court, on the Court's calendar, or in the applicable hearing agenda.

3. **Sale Objection Deadline.** Objections, if any, to the Motion and the sale of the Assets to a Successful Bidder, except objections solely related to the identity of the Successful Bidder, any changes to the Form APA, and adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder ("Initial Objections"), must be made by **March 16, 2020, at 10:00 a.m., EDT** (the "Sale Objection Deadline"). Objections solely to the conduct of the Auction, the identity of the Successful Bidder, changes to the form APA, and

adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder must be made by **10:00 a.m., EDT on March 19, 2020**. In each case, all objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court no later than the Sale Objection Deadline and served on (i) the proposed counsel to the Debtors and (ii) counsel to the Stalking Horse Bidder.

4. **Response Deadline.** Any written responses or replies to (a) Initial Objections must be filed by **March 19, 2020, at 5:00 p.m., EDT** or (b) an objection to the (i) conduct of the Auction, (ii) the proposed Sale to the Successful Bidder, and (iii) the ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance, with respect to the assumption and assignment of any Designated Contracts, **must be filed by 5:00 p.m. prior to or presented at the hearing on March 20, 2020 at 10:00 a.m., (EDT on March 19, 2020)**; *provided* that such deadlines may be extended by agreement of the Debtors and the affected objecting party.

5. **Competitive Bidding.** The following dates and deadlines regarding competitive bidding are hereby established:

- (a) **Bid Deadline: March 12, 2020, at 11:59 p.m., EDT**, the deadline by which all Qualified Bids (as defined in the Bidding Procedures) must be **actually received** in writing in electronic format by the parties specified in the Bidding Procedures (the "Bid Deadline"); and
- (b) **Auction: March 17, 2020, at 10:00 a.m., EDT**, is the date and time the Auction, if one is needed; the Auction will be held at the offices of proposed counsel to the Debtors: DLA Piper LLP (US), 1251 Avenue of the Americas, New York, New York 10020, or such other place and time as the Debtors shall notify all Qualified Bidders that have submitted Qualified Bids (which shall be deemed to include the Stalking Horse Bidder).

II. Bidding Procedures and Related Relief

6. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1** and incorporated by reference as though fully set forth herein, are hereby approved in their entirety. The Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Sale, and any party desiring to submit a higher or better offer for the Assets must comply with the terms of the Bidding Procedures and this Order. The Bidding Procedures shall also govern the terms on which the Debtors will proceed with the Auction, the Sale pursuant to the modified APA, and/or the selection of the Stalking Horse Bidder as the Successful Bidder. The Debtors are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures.

7. The failure to specifically include or reference any particular provision, section, or article of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision, section, or article, it being the intent of this Court that the Bidding Procedures are authorized in their entirety.

III. Auction

8. The Debtors are authorized, subject to the terms of this Order and the Bidding Procedures, to take actions reasonably necessary, in the discretion of the Debtors in consultation with the Consultation Parties, to conduct and implement the Auction.

9. Any party in interest may attend (but not participate in) the Auction if any such party in interest provides the Debtors with written notice of its intention to attend the Auction on or before ~~the Bid Deadline~~ [March 13, 2020](#), which written notice shall be sent to proposed counsel for the Debtors via electronic mail, to Maris J. Kandestin, Esq., at maris.kandestin@us.dlapiper.com. For the avoidance of doubt, only Qualified Bidders (including

the Stalking Horse Bidder, which shall be deemed a Qualified Bidder at all times) will be entitled to make any Bids at the Auction. For the avoidance of doubt, the Consultation Parties may attend the Auction without sending prior written notice of their intention to do so.

10. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid. Other than as expressly set forth in this Order or the Bidding Procedures, the Debtors may conduct the Auction in the manner they reasonably determine will result in the highest or otherwise best Qualified Bid.

11. Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the bidding, (ii) its Qualified Bid is a good-faith bona fide offer, and (iii) it intends to consummate the proposed Sale if selected as the Successful Bidder.

12. Other than as expressly set forth in this Order or the Bidding Procedures, the Debtors (in consultation with the Consultation Parties) reserve the right as they may reasonably determine to be in the best interest of their estates and in the exercise of their fiduciary duties to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders (other than the Stalking Horse Bidder); (f) extend the deadlines set forth herein or in the Bidding Procedures; and (g) continue or cancel the Auction and/or Sale Hearing, including by announcement in open court without further notice.

1. In recognition of the considerable time, energy, and resources that the Stalking Horse Bidder has expended in connection with the Stalking Horse Transaction, the Debtors have agreed that if the Stalking Horse Bidder is not the Successful Bidder (or if the Debtors consummate any plan or sale of all or substantially all of the Debtors' Assets other than the Stalking Horse Transaction), the Stalking Horse Bidder shall be entitled to the Bid Protections, including a Break-Up Fee of 3% of the Purchase Price and an Expense Reimbursement of up to \$1,000,000. The Bid Protections shall be deemed allowed administrative expenses under Bankruptcy Code sections 503(b) and 507(a)(2) and shall be paid in accordance with the provisions of the Stalking Horse APA in the event that the Stalking Horse Bidder is not the Successful Bidder.

2. Objections to the sale of any avoidance actions identified by the Stalking Horse Bidder shall be filed by the Committee or any party in interest by one (1) day prior to the Sale Hearing.

IV. Sale Hearing Notice and Related Relief

3. The Sale Notice is hereby approved. The Debtors will use commercially reasonable efforts to, within one (1) business day following the entry of this Order (the "Service Date"), cause the Sale Notice to be served in accordance with the Local Rules on: (a) the Office of the United States Trustee; (b) the Securities & Exchange Commission; (c) the Internal Revenue Service; (d) the Delaware State Treasury; (e) the Delaware Secretary of State; (f) counsel to the Unsecured Creditors' Committee; (g) counsel to the DIP Lender; (h) the United States Attorney's Office for the District of Delaware; (i) any party known or reasonably believed to have asserted any lien, claim, or encumbrance or other interest in the Assets; (j) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all

of the Assets; (k) any parties that have requested notice in these Cases pursuant to Bankruptcy Rule 2002; (l) all taxing authorities; and (m) to the extent not covered by (a) through (l), all known creditors and parties in interest of the Debtors. The Debtors shall also post the Sale Notice and the Order on the website of the Debtors' claims and noticing agent located at <http://www.kccllc.net/valeritas>.

4. Additionally, within two (2) days of the Service Date or as soon as practicable thereafter, the Debtors shall publish notice of the proposed Sale, substantially in the form of the Sale Notice (the "Publication Notice"), once in the national edition of *The Wall Street Journal*, *The New York Times*, *USA Today*, or another publication of similar circulation. Publication of the Publication Notice shall be sufficient and proper notice of any Sale to any other interested parties whose identities are unknown to the Debtors.

V. Assumption Procedures

5. The procedures set forth below regarding the assumption and assignment of the executory contracts and/or executory leases proposed to be assumed and assigned by the Debtors pursuant to section 365(b) and (f) of the Bankruptcy Code in connection with the Sale (the "Assumption Procedures"), substantially in the form attached hereto as **Exhibit 4** and incorporated by referenced, are hereby approved.

6. The Assumption Procedures shall govern the assumption and assignment of all of the Debtors' executory contracts and unexpired leases to be assumed and assigned in connection with the Sale (each, a "Designated Contract" and, collectively, the "Designated Contracts"), subject to the payment of any amounts necessary to cure any defaults arising under any Designated Contract (the "Cure Amount").

~~7. Except as provided in the applicable modified APA, the Debtors shall have no liability or obligation with respect to defaults relating to the Designated Contracts arising, accruing, or relating to a period on or after the effective date of assignment.~~

~~8.~~ 7. The Contract Assumption Notice, substantially the form attached hereto as **Exhibit 5**, is hereby approved.

VI. Other Related Relief

21. Any objections to the entry of this Order and the relief granted herein that have not been withdrawn, waived, resolved, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

22. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

23. To the extent the provisions of this Order are inconsistent with the provisions of any exhibits referenced herein or with the Motion, the provisions of this Order shall control.

24. The Debtors are authorized and empowered to take all actions they deem necessary to implement the relief granted in this Order.

25. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Summary report:	
Litéra® Change-Pro TDC 10.1.0.700 Document comparison done on 3/6/2020 2:19:04 PM	
Style name: DLA Piper	
Intelligent Table Comparison: Active	
Original DMS: iw://USDMS.PIPER.ROOT.LOCAL/EAST/171589786/15	
Modified DMS: iw://USDMS.PIPER.ROOT.LOCAL/EAST/171589786/16	
Changes:	
<u>Add</u>	9
Delete	14
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	1
Table Delete	1
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	25

Exhibit 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	x	
	:	
In re:	:	Chapter 11
	:	
VALERITAS HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 20-10290 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	x	

BIDDING PROCEDURES

Valeritas Holdings, Inc., a Delaware corporation, and its wholly owned subsidiary debtors and debtors in possession in the above-captioned Chapter 11 Cases² (collectively, the “Debtors”) have executed that certain *Asset Purchase Agreement* (together with all exhibits, schedules, and attachments thereto, the “Stalking Horse APA”), dated as of February 9, 2020, with Zealand Pharma A/S (“Zealand”), by which Zealand or a designee of Zealand as permitted pursuant to the Stalking Horse APA (collectively, the “Stalking Horse Bidder”) proposes to purchase substantially all of the Debtors’ assets (the “Assets”), for a purchase price in the aggregate amount of \$23 million in cash plus the assumption of certain liabilities, pursuant to a sale pursuant to section 363 of the Bankruptcy Code. The Stalking Horse Bidder’s proposal to acquire the Debtors’ Assets in accordance with the Stalking Horse APA is referred to as the “Stalking Horse Transaction.”

On March __, 2020, the Bankruptcy Court entered an order [D.I. __] (the “Order”) approving these bidding procedures (the “Bidding Procedures”). The Bidding Procedures set forth the process by which the Debtors, in consultation with the Consultation Parties (as defined and set forth below), will solicit and evaluate higher or otherwise better Bids for the acquisition of the Debtors’ business and Assets. If the Debtors receive one or more Qualified Bids, in addition to the Stalking Horse Transaction, the Debtors will conduct an auction (the “Auction”) among such Qualified Bidders in accordance with these Bidding Procedures. If the Debtors do not receive a Qualified Bid (other than that of the Stalking Horse Bidder), the Debtors will not conduct an Auction and shall designate the Stalking Horse Bidder as the Successful Bidder.

The Debtors will consider Bids that are structured as an offer to purchase the Assets in a sale under section 363 of the Bankruptcy Code (a “Sale”).

¹ The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms used but not otherwise defined in these Bidding Procedures shall have the meaning ascribed to them in the Motion or the Stalking Horse APA, as applicable.

KEY SALE PROCESS DATES

Subject to the Debtors' rights set forth herein, the proposed key dates for the sale process are as follows:

March 6, 2020, at 10:00 a.m. (EST)	Hearing to consider entry of the Order approving the Bidding Procedures
March 6, 2020, at 11:59 p.m. (EST)	Deadline for Debtors to provide non-debtor parties with (i) a list of Designated Contracts, and (ii) notice of the proposed Cure Amounts for the Designated Contracts (the " <u>Assumption and Assignment Service Deadline</u> ")
March 12, 2020, at 11:59 p.m. (EDT)	Bid Deadline
March 16, 2020, at 10:00 a.m. (EDT)	Deadline to object to the Debtors' proposed assumption and assignment of Designated Contracts and related Cure Amounts
March 16, 2020, at 10:00 a.m. (EDT)	Deadline to object (" <u>Sale Objection Deadline</u> ") ³ to Sale (" <u>Sale Objections</u> ")
March 16, 2020, at 12:00 p.m. (EDT)	Deadline for Debtors to notify bidders of whether their Bids are Qualified Bids (the " <u>Qualified Bid Deadline</u> ")
March 17, 2020, at 10:00 a.m. (EDT)	Auction to be held (if necessary)
March 18, 2020, at 12:00 p.m. (EDT)	Deadline for Debtors to (i) file with the Court the Notice of Successful Bidder and (ii) provide notice to non-Debtor parties of any Designated Contracts
<u>March 19, 2020, at 5:00 p.m. (EDT)</u>	<u>Deadline for Debtors and other parties to file written responses to Sale Objections (if any)</u>
March 19 <u>20</u> , 2020, at 10:00 a.m. (EDT)	Deadline to object to (i) conduct of the Auction, (ii) the proposed Sale to the Successful Bidder, and (iii) the ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance, with respect to the assumption and assignment of any Designated Contracts
March 19, 2020, at 5:00 p.m. (EDT)	Deadline for Debtors and other parties to file written responses to Sale Objections (if any)
March 20, 2020, at 10:00 a.m. (EDT)	Date of a proposed Sale Hearing to consider entry of the Sale Order
April 2, 2020	Closing

³ This objection deadline applies to all objections to the Motion and the sale of the Assets to a Successful Bidder, with the exception of objections solely related to the identity of the Successful Bidder, any changes to the Form Purchase Agreement, and adequate assurance of future performance by the Successful Bidder.

Marketing Process

I. Contact Parties

The Debtors, in consultation with their investment banker Lincoln International (“Lincoln”), developed a list of parties whom they believe may be interested in, and whom the Debtors reasonably believe would have the financial resources to consummate, a transaction (a “Transaction”). The list of parties includes both strategic investors and financial investors (collectively, the “Contact Parties”). The Contact Parties include parties whom the Debtors or their advisors previously contacted regarding a Transaction, regardless of whether such parties expressed any interest at such time in pursuing a Transaction. The Debtors will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate, in consultation with the Consultation Parties.

The Debtors may distribute (to the extent not already distributed) to each Contact Party and any other interested party or potential bidder (each, a “Potential Bidder”) an “Information Package” consisting of: (i) a copy of the Bidding Procedures, the Order, and the Motion; (ii) a form confidentiality agreement (a “Confidentiality Agreement”), which shall include typical agreements by the Contact Party not to solicit employees of the Debtors; and (iii) such other materials as may be appropriate under the circumstances.

II. Participation Requirements

To receive due diligence information, including full access to the Debtors’ electronic data room and to additional non-public information regarding the Debtors, a Potential Bidder, other than the Stalking Horse, must deliver the following documents (collectively, the “Preliminary Bid Documents”) by email to each of: (i) proposed counsel for the Debtors, DLA Piper LLP (US), 1201 North Market Street, Suite 2100 Wilmington, Delaware 19801 (Attn: Maris J. Kandestin, Esq., Maris.Kandestin@us.dlapiper.com), and 1251 Avenue of the Americas, New York, New York 10020 (Attn: Rachel Ehrlich Albanese, Esq., Rachel.Albanese@us.dlapiper.com); (ii) proposed investment banker to the Debtors, Lincoln International, 500 West Madison Street, Suite 3900, Chicago, Illinois 60661 (Attn: Brendan J. Murphy, BMurphy@lincolninternational.com, Brian Bock, bbock@lincolninternational.com, and Jeremy Klein, JKlein@lincolninternational.com); (iii) counsel to the DIP Lender, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19899 (Attn: Adam G. Landis, landis@lrclaw.com, and Kerri Mumford, mumford@lrclaw.com), and Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Peter Antozsyk, Esq., pantoszyk@proskauer.com and Lucy F. Kweskin, Esq., lkweskin@proskauer.com); and (iv) counsel to the official committee of unsecured creditors (the “Committee”), Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, Morristown, NJ 07962 (Attn: Brett S. Moore, Esq., bsmoore@pbnlaw.com, Robert M. Schechter, Esq. rmschechter@pbnlaw.com, and Kelly D. Curtin Esq., kdcurtin@pbnlaw.com (collectively, the “Bid Recipients”):

- a. an executed Confidentiality Agreement on terms acceptable to the Debtors, to the extent not already executed; and
- b. evidence by the Potential Bidder of its financial capacity to close a proposed transaction, which may include financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, the party that will bear liability for a breach).

Promptly after a Potential Bidder delivers Preliminary Bid Documents to the Bid Recipients, the Debtors, in consultation with the Consultation Parties, will assess the adequacy of the evidence of its financial capacity and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may proceed to conduct due diligence and ultimately submit a Bid and participate in the Auction, as applicable. Only those Potential Bidders that have submitted acceptable Preliminary Bid Documents (each, a "Bidder") may submit Bids.

As soon as reasonably practicable after the Debtors, in consultation with the Consultation Parties, determine that a Potential Bidder is a Bidder, the Debtors will provide such Bidder with access to an electronic data room and reasonable due diligence information as requested by such Bidder (to the extent such Bidder has not already been provided such access and information). All due diligence requests must be directed to Lincoln. Lincoln will work to facilitate meetings between any interested Bidder and the Debtors' management team. For all Potential Bidders, the due diligence period will end on the Bid Deadline, and after the Bid Deadline, the Debtors will have no obligation to furnish any due diligence information.

The Debtors and their advisors will coordinate all reasonable requests from Bidders for additional information and due diligence access. The Debtors, in consultation with the Consultation Parties, may decline to provide such information to Bidders who, in the Debtors' business judgment and in consultation with the Consultation Parties, have not established, or who have raised doubt, that such Bidder intends in good faith or has the capacity to consummate a Transaction.

For any Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold, in consultation with the Consultation Parties, any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such Bidder at such time.

Each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Bidder and its contemplated Transaction.

Stalking Horse Bid Deadline and Bid Protections

The Stalking Horse Bidder shall be deemed to be a Qualified Bidder at all times. Likewise, the Stalking Horse APA shall at all times be deemed a Qualified Bid (as defined herein). The Stalking Horse is not required to provide any Deposit other than the deposit set forth in the Stalking Horse APA.

In recognition of the considerable time, energy, and resources that the Stalking Horse Bidder has expended in connection with the Stalking Horse Transaction, the Debtors have agreed that if the Stalking Horse Bidder is not the Successful Bidder (or if the Debtors consummate any sale of all or substantially all of the Debtors' Assets other than the Stalking Horse Transaction), the Stalking Horse Bidder shall be entitled to the following Bid Protections: (1) a Break-Up Fee of 3% of the Purchase Price, and (2) Expense Reimbursement of up to \$1,000,000.

The Bid Protections are payable pursuant to the terms and conditions of, and under certain circumstances as set forth in, the Stalking Horse APA. Payment of the Bid Protections shall be governed by the Stalking Horse APA and the Order. The Bid Protections will be an allowed super-priority administrative expense claim in accordance with the terms of the Stalking Horse APA and pursuant to the Order, senior to all other administrative expense claims against the Debtors' estates but junior to the DIP Obligations (as defined in the Interim DIP Order).

The Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auction, the Sale, and related matters, including the right to object to the conduct of the Auction and interpretation of these Bidding Procedures.

Auction Process

I. Bid Deadline

A Bidder that desires to make a proposal, solicitation, or offer (each, a "Bid") shall transmit such proposal, solicitation, or offer via email to each of the Bid Recipients so as to be **actually received** by them on or before **March 12, 2020 at 11:59 p.m.** (EDT) (the "Bid Deadline").

II. Bid Requirements

Each Bid by a Bidder must be submitted in writing and satisfy the following requirements (collectively, the "Bid Requirements"):

- a. Purpose: Each Bid must state that it includes an offer by the Bidder to purchase all or a portion of the Assets and identify such Assets.
- b. Purchase Price: Each Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, such as certain liabilities to be assumed by the Bidder as part of the Transaction, for example (the "Purchase Price").
- c. Deposit: Each Bid must be accompanied by a cash deposit in an amount equal to 10% of the aggregate value of the cash consideration of the Bid to be held in an escrow account to be identified and established by the Debtors (the "Deposit").
- d. Marked Agreement: Each Bid must include, at a minimum, a draft asset purchase agreement (the "APA"), together with a redline version of the revised APA against the Stalking Horse APA, including the exhibits and schedules related thereto and any related Transaction documents or other material documents integral to such Bid, pursuant to which the Bidder proposes to effectuate the Transaction (collectively, the "Transaction Documents"). Each Bidder's APA must provide (i) a commitment to close within two business days after all closing conditions are met and in any event no later than April 2, 2020, and (ii) a representation that the Bidder will use its reasonable best efforts to satisfy all applicable regulatory conditions.

- e. Committed Financing: To the extent that a Bid is not accompanied by evidence of the Bidder's capacity to consummate the Transaction set forth in its Bid with cash on hand, each Bid must include evidence of committed financing that demonstrates that the Bidder has received sufficient debt and/or equity funding commitments to satisfy the Bidder's Purchase Price and other obligations under its Bid. Such funding commitments or other financing acceptable to the Debtors (in consultation with the Consultation Parties) and must be unconditional and not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors (in consultation with the Consultation Parties).
- f. Contingencies; No Financing or Diligence Outs: A Bid shall not be conditioned on a Bidder obtaining, or the sufficiency of, financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions.
- g. Identity: Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel whom the Debtors' advisors should contact regarding such Bid.
- h. Authorization: Each Bid must contain evidence that the Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the Transactions contemplated in such Bid.
- i. Substantial Contribution Waiver. Each Bid must contain an express waiver, effective upon submission of the Bid, of any substantial contribution claims by the Bidder.
- j. As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Bidder: (1) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (2) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (3) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the

Auction, except as expressly stated in the Bidder's Transaction Documents.

- k. Same or Better Terms. Each Bid shall be based on the Stalking Horse Bid and must be on terms that are not more burdensome than the terms of the Stalking Horse Bid, as determined by the Debtors, in consultation with the Consultation Parties, and considering, among other factors, the scope and manner of the proposed transaction. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the Sale and shall include a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the Stalking Horse APA clearly marked to show all changes requested by the Potential Bidder, including those related to the respective Purchase Price and Assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such Bid.
- l. Expenses; Disclaimer of Fees. Each Bid (other than that set forth in the Stalking Horse APA) must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Potential Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting a Bid any Potential Bidder is waiving any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

By submitting its Bid, each Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid or seeking to reopen the Auction after conclusion of the Auction. **The submission of a Bid shall constitute a binding and irrevocable offer to acquire the Assets reflected in such Bid.**⁴

III. Designation of Qualified Bidders

A Bid will be considered a "Qualified Bid," and each Bidder that submits a Qualified Bid will be considered a "Qualified Bidder," if the Debtors, in consultation with the Consultation Parties, determine that such Bid:

- a. satisfies the Bid Requirements;
- b. is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined below), within a time frame acceptable to the Debtors (in consultation with the Consultation Parties); and

⁴ The Debtors shall deliver to the Prepetition Lenders, the DIP Lender, and the Committee, promptly upon receipt, all draft term sheets and other documentation in connection with any Sale transaction.

- c. The Debtors (after consultation with the Consultation Parties) will use commercially reasonable efforts to, within one (1) business day after the Bid Deadline, notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide the Notice Parties (as defined below), as well as the Stalking Horse Bidder with a copy of each Qualified Bid.

If any Bid is determined not to be a Qualified Bid, the Debtors will refund such Bidder's Deposit promptly after the Bid Deadline.

Between the date that the Debtors notify a Bidder that it is a Qualified Bidder and the Auction date, the Debtors may (in consultation with the Consultation Parties) discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors (in consultation with the Consultation Parties), a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase its Purchase Price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures. As stated above, the Stalking Horse shall be deemed a Qualified Bidder at all times, and the Stalking Horse APA shall be a Qualified Bid.

If any Bid is determined not be a Qualified Bid, the Debtors may (in consultation with the Consultation Parties) work with such Bidder to revise its Bid so that, as revised, it constitutes Qualified Bid. Potential Bidders shall have until the Qualified Bid Deadline to remedy any deficiencies with respect to non-conforming or non-Qualified Bids.

IV. DIP Lender

The DIP Lender⁵ shall automatically be deemed a Qualified Bidder and shall have the right to credit bid on a dollar-for-dollar basis all or a portion of the outstanding DIP Obligations in accordance with section 363(k) of the Bankruptcy Code and applicable law.

Nothing in these Bidding Procedures shall be deemed to provide the consent of the DIP Lender (including under 363(f) or otherwise) to the sale of the assets or entry of the Sale Order. Subject to the DIP Order, the DIP Lender expressly reserves all rights to object or otherwise contest any such sale or aspects thereof including valuation of non-cash consideration and the Debtors' determination of highest and best bids; *provided that* until the indefeasible payment of the DIP Obligations in full and termination of the DIP Facility, the Prepetition Lenders shall take no such action if the DIP Lender consents to the Successful Bid or otherwise objects to the Prepetition Lender taking such action.

V. The Auction

⁵ The terms "DIP Lender" and "DIP Obligations" shall have the respective meaning given to those terms under the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 66] and any related final order (each as amended, modified or supplemented in accordance with the terms thereof, the "Interim DIP Order").

If necessary, the Auction shall take place on **March 17, 2020, at 10:00 a.m. (EDT)** at the offices of proposed counsel for the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas New York, New York 10020, or such other place and time as the Debtors shall notify all Qualified Bidders that have submitted Qualified Bids (including the Stalking Horse Bidder).

No later than **March 16, 2020 at 4:00 p.m. (EDT)**, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid (the "**Baseline Bid**") and provide copies of the documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors (in consultation with the Consultation Parties) deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof including any terms or consideration of such Qualified Bid; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Baseline Bid; and (e) the tax consequences of such Qualified Bid (collectively, the "**Bid Assessment Criteria**").

The Auction shall be conducted according to the following procedures:

a. The Debtors Shall Preside Over the Auction; Participation and Attendance at the Auction

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid.

Only Qualified Bidders that have submitted Qualified Bids by the **Qualified Bid Deadline** are eligible to participate in the Auction, subject to the terms of these Bidding Procedures and other limitations as may reasonably be imposed by the Debtors in consultation with the Consultation Parties. Qualified Bidders participating in the Auction must appear at the Auction in person or through a duly authorized representative.

Any party in interest may attend (but not participate in) the Auction if any such party in interest provides the Debtors with written notice of its intention to attend the Auction on or before the Bid Deadline, which written notice shall be sent to proposed counsel for the Debtors via electronic mail, to Maris J. Kandestin, Esq., at maris.kandestin@us.dlapiper.com. For the avoidance of doubt, only Qualified Bidders (including the Stalking Horse Bidder) will be entitled to make any Bids at the Auction. For the avoidance of doubt, the Consultation Parties may attend the Auction without sending prior written notice of their intention to do so.

b. Terms of Overbids

"**Overbid**" means any bid made at the Auction by a Qualified Bidder after the Debtors' announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

- (i) Minimum Initial Overbid. Any Overbid following the Baseline Bid shall be no less than the value of the Bid Protections, plus a value equal to \$500,000.
- (ii) Minimum Overbid Increment. Any Overbid to a Prevailing Highest Bid (as defined below) shall be in increments of no less than \$150,000.⁶
- (iii) Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (the “Overbid Round Deadline”), subject to extension by the Debtors in consultation with the Consultation Parties, by which time any Overbids must be submitted to the Debtors.
- (iv) Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estates than any prior Qualified Bid or Overbid and shall otherwise comply with the terms of these Bidding Procedures.
- (v) Announcing Highest Bid. After each Overbid Round Deadline, the Debtors shall determine, in consultation with the Consultation Parties and taking into account the Bid Assessment Criteria, whether an Overbid is higher or otherwise better than the Baseline Bid in the initial Overbid round or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall announce and describe to all Qualified Bidders present at the Auction the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, the identity of the bidder with the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

c. Consideration of Overbids

The Debtors, in consultation with the Consultation Parties, reserve the right to adjourn the Auction as necessary to (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) provide Qualified Bidders with additional time to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to offer such additional evidence as the Debtors may require, such as with respect to financial capacity or sufficient funding or financing, in order to consummate the proposed Transaction at the prevailing Overbid amount.

d. Closing the Auction

The Auction shall continue until there is only one Qualified Bid that the Debtors determine, after consultation with the Consultation Parties, and taking into account the Bid Assessment Criteria, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the “Successful Bid,” and such Qualified Bidder, the “Successful Bidder,” and the Auction will be closed. Such acceptance by the Debtors of the Successful Bid (to be made in accordance with the terms of this

⁶ Any Overbid to a Prevailing Highest Bid by any party other than the Stalking Horse Bidder must provide more value for the Debtors’ estates than any prior bid after taking into account the Bid Protections in each round of bidding.

section V(d) of the Bidding Procedures) is conditioned upon approval by the Court of the Successful Bid. Following the closing of the Auction, the Debtors shall not initiate contact with, solicit, or encourage proposals from any person or entity with respect to the Assets.⁷

e. No Collusion; Good-Faith *Bona Fide* Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the bidding, (ii) its Qualified Bid is a good-faith *bona fide* offer, and (iii) it intends to consummate the proposed Transaction if selected as the Successful Bidder.

VI. Backup Bidder

- a. Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for the Assets shall be required to serve as a backup bidder (the “Backup Bidder”) until such time that the Sale to the Successful Bidder is consummated, but no later than thirty (30) days past the Sale Hearing, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.
- b. The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors, after consultation with the Consultation Parties, at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until such time that the Transaction is consummated. The Backup Bidder’s Deposit shall be held in escrow pending consummation of the Sale to the Successful Bidder.
- c. If a Successful Bidder fails to consummate the approved Transaction contemplated by its Successful Bid, the Debtors in consultation with the Consultation Parties may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder’s Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

VII. Notice and Consultation Parties

Information that must be provided to the “Notice Parties” under these Bidding Procedures must be provided to the following parties: (a) counsel to the DIP Lender, Landis Rath & Cobb LLP, 919

⁷ The Debtors shall deliver to the Prepetition Lenders, the DIP Lender, and the Committee, promptly upon receipt, all draft term sheets and other documentation in connection with any Sale transaction.

Market Street, Suite 1800, Wilmington, Delaware 19899 (Attn: Adam G. Landis, landis@lrclaw.com, and Kerri Mumford, mumford@lrclaw.com), and Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Peter Antozsyk, Esq., pantoszyk@proskauer.com and Lucy F. Kweskin, Esq., lkweskin@proskauer.com); (b) Venable LLP (Attn: Jeffrey S. Sabin, Esq., jssabin@venable.com), 1270 Avenue of the Americas, 24th Fl., New York, New York 10020, as counsel to the Prepetition Lender; and (c) counsel to the Committee, Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, Morristown, NJ 07962 (Attn: Brett S. Moore, Esq., bsmoore@pbnlaw.com, Robert M. Schechter, Esq., rmschechter@pbnlaw.com, and Kelly D. Curtin Esq., kdcurtin@pbnlaw.com).

The term “Consultation Parties” shall mean: (a) the Committee, (b) the DIP Lender, to the extent it does not intend to participate as a Qualified Bidder at the Auction, and (c) the Prepetition Lender, as it does not intend to submit a credit bid for the Assets under section 363(k) of the Bankruptcy Code, and the advisors for each of the foregoing.

X. Reservation of Rights

Without prejudice to the rights of the Stalking Horse Bidder under the terms of the Stalking Horse APA, the Debtors reserve their rights to modify these Bidding Procedures, after consultation with the Consultation Parties, in any manner that they reasonably determine will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions in connection with a Sale, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids.

For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law.

XI. Consent to Jurisdiction

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction or the construction and enforcement of these Bidding Procedures.

XII. Sale Hearing / Confirmation Hearing

A hearing to consider approval of the Successful Bid (or to approve the Stalking Horse APA, as applicable, if no Auction is held) (the “Sale Hearing”) is proposed to take place on **March 20, 2020, at 10:00 a.m., EST/EDT**, at the Court. At the Sale Hearing, the Debtors will present such Successful Bid to the Court for approval.

XIII. Return of Deposit

The Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more escrow accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to the Successful Bidder and the Backup Bidder) promptly after the Auction.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors will not have any obligation to return the Deposit deposited by such

Successful Bidder, which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors, and the Debtors shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court.

XIV. No Modification of Bidding Procedures

These Bidding Procedures may not be modified except with the express prior written consent of the Debtors, after consultation with the Consultation Parties, and the DIP Lender.

Summary report:	
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Exhibit 2**Key Sale Process Dates**

March 6, 2020, at 10:00 a.m. (EST)	Hearing to consider entry of the Order approving the Bidding Procedures
March 6, 2020, at 11:59 p.m. (EST)	Deadline for Debtors to provide non-debtor parties with (i) a list of Designated Contracts, and (ii) notice of the proposed Cure Amounts for the Designated Contracts (the “ <u>Assumption and Assignment Service Deadline</u> ”)
March 12, 2020, at 11:59 p.m. (EDT)	Bid Deadline
March 16, 2020, at 10:00 a.m. (EDT)	Deadline to object to the Debtors’ proposed assumption and assignment of Designated Contracts and related Cure Amounts
March 16, 2020, at 10:00 a.m. (EDT)	Deadline to object (“ <u>Sale Objection Deadline</u> ”) ¹ to Sale (“ <u>Sale Objections</u> ”)
March 16, 2020, at 12:00 p.m. (EDT)	Deadline for Debtors to notify bidders of whether their Bids are Qualified Bids
March 17, 2020, at 10:00 a.m. (EDT)	Auction to be held (if necessary)
March 18, 2020, at 12:00 p.m. (EDT)	Deadline for Debtors to (i) file with the Court the Notice of Successful Bidder and (ii) provide notice to non-Debtor parties of any Designated Contracts
March 19, 2020, at 5:00 p.m. (EDT)	Deadline for Debtors and other parties to file written responses to Sale Objections (if any)
March 19, 2020, at 10:00 a.m. (EDT)	Deadline to object to (i) conduct of the Auction, (ii) the proposed Sale to the Successful Bidder, and (iii) the ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance, with respect to the assumption and assignment of any Designated Contracts
March 19, 2020, at 5:00 p.m. (EDT)	Deadline for Debtors and other parties to file written responses to Sale Objections (if any)
March 20, 2020, at 10:00 a.m. (EDT)	Date of a proposed Sale Hearing to consider entry of the Sale Order
April 2, 2020	Closing

¹ This objection deadline applies to all objections to the Motion and the sale of the Assets to a Successful Bidder, with the exception of objections solely related to the identity of the Successful Bidder, any changes to the Form Purchase Agreement, and adequate assurance of future performance by the Successful Bidder.

EXHIBIT 3

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----	x	
--	:	
In re:	:	Chapter 11
VALERITAS HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 20-10290 (LSS)
Debtors.	:	(Jointly Administered)
-----	x	

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE REGARDING THE FOLLOWING:

1. On February 9, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), each filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On February 9, 2020, the Debtors entered into an Asset Purchase Agreement (the “Stalking Horse APA”) with Zealand Pharma A/S (“Zealand”), by which Zealand or a designee of Zealand as permitted pursuant to the Stalking Horse APA (collectively, the “Stalking Horse Bidder”) will acquire all or substantially all of the Debtors’ assets (the “Assets”).

3. On February 10, 2020, in connection with a proposed sale of the Assets pursuant to section 363 of the Bankruptcy Code (the “Sale”) to the successful bidder (the “Successful Bidder”) at an auction (the “Auction”), the Debtors filed a motion (the “Motion”),² seeking, among other things, (i) entry of an order (the “Bidding Procedures Order”) approving the bidding procedures (the “Bidding Procedures”) governing the solicitation of higher or better Bids; (ii) establishing procedures for the assumption or assignment and assumption of executory contracts; (iii) scheduling a Sale Hearing; and (iv) granting related relief [D.I. 25].

4. On March 6, 2020, the Court entered the Bidding Procedures Order [D.I. __]. Pursuant to the Bidding Procedures Order, if one or more Qualified Bids are received before the Bid Deadline (as defined below), the Debtors will conduct the Auction among such Qualified Bidders to determine the highest or otherwise best Qualified Bid, beginning on **March 17, 2020, at 10:00 a.m. (EDT)** at the offices of DLA Piper LLP (US), 1251 Avenue of the

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Americas, New York, New York, or such other place and time as the Debtors shall notify all bidders that have submitted Qualified Bids (including the Stalking Horse Bidder) and any official committee appointed in the Debtors' Chapter 11 Cases and its counsel.

5. Only Qualified Bidders that have submitted Qualified Bids by the **March 12, 2020, at 4:00 p.m. (EDT)** Bid Deadline are eligible to participate in the Auction, subject to the terms of the Bidding Procedures and other limitations as may reasonably be imposed by the Debtors. Qualified Bidders participating in the Auction must appear at the Auction in person or through a duly authorized representative.

6. Any party in interest may attend (but not participate in) the Auction if any such party in interest provides the Debtors with written notice of its intention to attend the Auction on or before the Bid Deadline, which written notice shall be sent to proposed counsel for the Debtors via electronic mail, to Maris J. Kandestin, Esq., at maris.kandestin@us.dlapiper.com. For the avoidance of doubt, only Qualified Bidders (including the Stalking Horse Bidder) will be entitled to make any Bids at the Auction. For the avoidance of doubt, the Consultation Parties may attend the Auction without sending prior written notice of their intention to do so.

7. If the Debtors do not receive a Qualified Bid (other than that of the Stalking Horse Bidder), the Debtors will not conduct an Auction and shall designate the Stalking Horse Bidder as the Successful Bidder.

8. A hearing to consider approval of the Successful Bid (or to approve the Stalking Horse APA, as applicable, if no Auction is held) (the "Sale Hearing") ~~is proposed to~~ shall take place on **March 20, 2020, at 10:00 a.m. (EDT)**, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801. At the Sale Hearing, the Debtors will present such Successful Bid to the Court for approval.

9. Objections, if any, to the Motion and the sale of the Assets to a Successful Bidder, must be filed with the Court and served upon counsel to the Debtors and counsel to the Stalking Horse Bidder so as to be actually received by **March 16, 2020, at 10:00 a.m. (EDT)**. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to solely with respect to the conduct of the Auction, any changes to the revised APA, or the adequate assurance of future performance from the Successful Bidder, shall be extended to **March 19~~20~~, 2020, at 10:00 a.m.**; ~~provided, however, that the deadline to object to matters unrelated to the identity of the Successful Bidder or conduct of the Auction shall not be extended.~~ In each case, all objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court no later than the applicable objection deadline and served on (i) proposed counsel to the Debtors and (ii) counsel to the Stalking Horse Bidder. *Any party who fails to timely file an objection to entry of the Sale Order (i) shall be forever barred from objecting thereto, (ii) shall be deemed to consent to the sale of the Assets as approved by any Sale Order, and (iii) shall be deemed to "consent" for purposes of Section 363(f)(2) of the Bankruptcy Code.*

10. This notice is subject to the fuller terms and conditions of the Motion, the Bidding Procedures, and the Bidding Procedures Order. In the event of any conflict, the Bidding Procedures Order shall control, and the Debtors encourage parties in interest to review such documents in their entirety. Parties interested in receiving more information regarding the Sale and/or copies of any related document, including the Motion, or the Bidding Procedures Order, may make a written request to counsel for the proposed counsel for the Debtors, DLA Piper LLP (US), 1201 North Market Street, Suite 2100 Wilmington, Delaware 19801 (Attn.: Maris J. Kandestin, Esq., maris.kandestin@us.dlapiper.com), and 1251 Avenue of the Americas, New York, New York 10020 (Attn.: Rachel Ehrlich Albanese, Esq., rachel.albanese@us.dlapiper.com). In addition, copies of the Motion, the Bidding Procedures Order and this notice can be found (i) at <http://www.kccllc.net/valeritas> (free of charge); and (ii) through PACER on the Court's website, <https://ecf.deb.uscourts.gov> (registration required), and are on file with the Clerk of the Court, 824 N. Market Street, Wilmington, Delaware 19801.

Dated: March __, 2020
Wilmington, Delaware

DLA PIPER LLP (US)

/s/ DRAFT

Maris J. Kandestin (DE 5294)
1201 North Market Street, Suite 2100
Wilmington, Delaware 19801
Telephone: (302) 468-5700
Facsimile: (302) 394-2341
Email: maris.kandestin@us.dlapiper.com

-and-

Rachel Ehrlich Albanese (admitted *pro hac vice*)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 335-4500
Facsimile: (212) 335-4501
Email: rachel.albanese@us.dlapiper.com

Proposed Counsel to Debtors and Debtors in Possession

Summary report:	
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Exhibit 4

Assumption Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- ---	X	
	:	
	:	Chapter 11
In re:	:	
	:	Case No. 20-10290 (LSS)
VALERITAS HOLDINGS, INC., <i>et al.</i> , ¹	:	
	:	(Jointly Administered)
Debtors.	X	
----- ---		

ASSUMPTION PROCEDURES

Valeritas Holdings, Inc., a Delaware corporation, and its wholly owned subsidiary debtors and debtors in possession in the above-captioned Chapter 11 Cases² (collectively, the “Debtors”) are seeking to sell their Assets through the process set forth in the Bidding Procedures. In connection with the Bidding Procedures and associated sale process, the Debtors have developed the below assumption procedures (the “Assumption Procedures”). The Assumption Procedures will facilitate the fair and orderly assumption and assignment of certain executory contracts and/or unexpired leases in connection with the Sale.

The Assumption Procedures are as follows:

I. CONTRACT ASSUMPTION NOTICE.

No later than March 6, 2020, at 11:59 p.m. (EST) (the “Assumption and Assignment Service Deadline”), the Debtors shall serve a notice of contract assumption in substantially the form attached to the Order as **Exhibit 5** (the “Contract Assumption Notice”) via first-class mail on all counterparties to all contracts expected to be assumed and assigned (“Designated Contracts”). The Contract Assumption Notice will inform the counterparties of the timing and procedures relating to such assumption, and, to the extent applicable, (i) the title of the executory contract or unexpired lease, as applicable, (ii) the name of the counterparty to the executory contract or unexpired lease, (iii) the Debtors’ good-faith estimates of the amount of the required cure payments, if any (the “Cure Amounts”) related to the applicable executory contract or unexpired lease, as applicable, and (iv) the Sale Objection Deadline; *provided, however*, that service of a Contract Assumption Notice does not constitute an admission that

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them elsewhere in the motion for approval of these Bidding Procedures (the “Motion”) filed contemporaneously herewith.

any contract is an executory contract, that any lease is unexpired, or that the stated Cure Amount related to any executory contract or unexpired lease constitutes a claim against the Debtors or establishes any rights against any Successful Bidder (all rights with respect thereto being expressly reserved); *provided further*, that, following the Auction, the Successful Bidder or the Debtors, as applicable, reserve all rights to assert that any Cure Amount is lower than the Debtors' estimate, subject to each counterparty's opportunity to object.

The inclusion of a contract or unexpired lease on the Contract Assumption Notice is not a guarantee that such contract or unexpired lease will ultimately be assumed and assigned.

II. CURE AMOUNTS AND ADEQUATE ASSURANCE OF FUTURE PERFORMANCE.

The payment of your Cure Amount by the Successful Bidder, as applicable, shall (i) constitute a cure of all defaults existing under your executory contract(s) or expired lease(s), as applicable, and (ii) compensate you for any actual pecuniary loss to such counterparty resulting from such default.

III. ~~ADDITIONS~~ELIMINATIONS.

~~The Debtors may designate, up to and including at the Sale Hearing (the "Designation Deadline"), additional executory contracts and/or unexpired leases as agreements to be assumed by the Debtors and assigned to the Successful Bidder (the "Additional Designated Contracts"). As soon as practicable, the Debtors shall serve a Contract Assumption Notice on each of the counterparties to such Additional Designated Contracts and their counsel of record, if any, indicating (i) that the Debtors intend to assume and assign the counterparty's executory contract or unexpired lease to the Successful Bidder, (ii) any assignee, and (iii) the corresponding estimated Cure Amount.~~

IV. ELIMINATIONS.

The Debtors may remove any executory contract or unexpired lease, as applicable, to be assumed by the Debtors and assigned to the Successful Bidder (the "Eliminated Agreements") through and including the Designation Deadline. The Debtors shall, as soon as reasonably practicable after identifying an Eliminated Agreement, serve a notice on each of the impacted counterparties and their counsel of record, if any, indicating that the Debtors no longer intend to assume and assign the counterparty's executory contract or unexpired lease to the Successful Bidder in connection with the Sale.

IV. ~~V.~~ SUPPLEMENTAL CONTRACT ASSUMPTION NOTICE.

Although the Debtors intend to make a good-faith effort to identify all Designated Contracts that may be assumed and assigned in connection with a Sale, the Debtors may discover that certain executory contracts were inadvertently omitted from the Designated Contracts list, or the Successful Bidder may identify ~~other~~additional executory contracts that they desire to assume and assign in connection with the Sale. Accordingly, the Debtors reserve

the right at any time after the Assumption and Assignment Service Deadline and before the date that is two (2) days prior to the Sale Hearing, to (i) supplement the list of Designated Contracts with previously omitted executory contracts, (ii) remove Designated Contracts from the list of executory contracts ultimately selected as Designated Contracts that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated Cure Amount associated with any Designated Contracts. In the event the Debtors exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of contract assumption and assignment (a “Supplemental Assumption Notice”) on each of the counterparties to such Designated Contracts and their counsel of record, if any; *provided, however*, the Debtors may not add an executory contract to the list of Designated Contracts that has been previously rejected by the Debtors by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Designated Contracts as was included in the Contract Assumption Notice.

V. ~~VI.~~ OBJECTIONS.

Objections, if any, to the proposed assumption and assignment or the Cure Amount proposed with respect thereto, or, if a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, to the assumption and assignment solely with respect to the adequate assurance of future payment from the Successful Bidder (the “Buyer Identity Objection Deadline”), *must* (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served upon counsel to the Debtors and counsel to the Stalking Horse Bidder ~~so as to be actually received by, and (v) be filed prior to or presented at the hearing scheduled for March 16~~20~~, 2020, at 10:00 a.m. (EDT), or such deadline set forth in the applicable Supplemental Assumption Notice. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment solely with respect to the adequate assurance of future payment from the Successful Bidder (the “Buyer Identity Objection Deadline”) shall be extended to March 19, 2020, at 10:00 a.m. (EDT)³; provided, however, that the deadline to object to the Cure Amount or other matters unrelated to the identity of the Successful Bidder shall not be extended.~~³

³ ~~The Debtors will file, as promptly as possible after the close of the Auction, but, in any event by March 18, 2020, at 12:00 p.m. (EDT), a Notice of Successful Bidder (as defined in the Motion). The Debtors will also transmit the Notice of Successful Bidder via email and fax, where available, to the counterparties to the Designated Contracts and post the Notice of Successful Bidder on the claims and noticing agent’s case dedicated website at <http://www.kccllc.net/valeritas>.~~

³ The Debtors will file, as promptly as possible after the close of the Auction, but, in any event by March 18, 2020, at 12:00 p.m. (EDT), a Notice of Successful Bidder (as defined in the Motion). The Debtors will also transmit the Notice of Successful Bidder via email and fax, where available, to the counterparties to the Designated Contracts and post the Notice of Successful Bidder on the claims and noticing agent’s case dedicated website at <http://www.kccllc.net/valeritas>.

The objection deadline for counterparties who receive a Supplemental Assumption Notice (“Supplemental Counterparties”) shall be the Sale Hearing. Notwithstanding the foregoing, the Buyer Identity Objection Deadline shall not be extended for Supplemental Counterparties.

If an objection to the Cure Amount or assumption and assignment is timely filed and not resolved by the parties, a hearing with respect to the objection will take place before the Honorable Laurie Selber Silverstein of the United States Bankruptcy Court for the District of Delaware, 824 Market St. N., 6th Floor, Courtroom #2, Wilmington, Delaware 19801 at the Sale Hearing to be held **on March 20, 2020, at 10:00 a.m. (EDT)**. A hearing regarding the Cure Amount, if any, may be continued at the discretion of the Debtors and the Successful Bidder until after the closing.

If there is a timely objection to a Cure Amount, any undisputed portion of such Cure Amount will be paid in accordance with these Assumption Procedures and such payment will not be withheld pending resolution of any such objection; *provided that* the Stalking Horse Bidder shall be obligated only to pay the Cure Amounts as set forth in the Stalking Horse APA.

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Any party that does not timely object to the Cure Amount, the proposed assumption and assignment of a Designated Contract or Additional Designated Contract listed on the Contract Assumption Notice or Supplemental Assumption Notice, or any Sale is deemed to have consented to (a) such Cure Amount, (b) the assumption and assignment of such Designated Contract or Additional Designated Contract (including the adequate assurance of future payment), (c) the related relief requested in the Motion, and (d) the Sale. **Such party shall be forever barred and estopped from objecting to the Cure Amount, the assumption and assignment of the Designated Contract, or Additional Designated Contract, adequate assurance of future performance, the relief requested in the Motion, and the Sale, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Successful Bidder and/or the Debtors, for purposes of section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other amounts against the Debtors or the Successful Bidder, as applicable, with respect to such party's Designated Contract or Additional Designated Contract.**

Summary report:	
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Intelligent Table Comparison: Active	
Original DMS: iw://USDMS.PIPER.ROOT.LOCAL/EAST/171701251/7	
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Delete	16
Move From	3
<u>Move To</u>	3
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	39

EXHIBIT 5

Contract Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- ---	x	
	:	
	:	Chapter 11
In re:	:	
	:	Case No. 20-10290 (LSS)
VALERITAS HOLDINGS, INC., <i>et al.</i> , ¹	:	
	:	(Jointly Administered)
Debtors.	x	
----- ---		

**NOTICE OF PROPOSED ASSUMPTION OR ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS**

PLEASE TAKE NOTICE REGARDING THE FOLLOWING:

1. On February 9, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), each filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On February 9, 2020, the Debtors entered into an Asset Purchase Agreement (the “Stalking Horse APA”) with Zealand Pharma A/S (“Zealand”), by which Zealand or a designee of Zealand as permitted pursuant to the Stalking Horse APA (collectively, the “Stalking Horse Bidder”) will acquire all or substantially all of the Debtors’ assets (the “Assets”).

3. On February 10, 2020, in connection with the proposed sale of substantially all of the Debtors’ Assets pursuant to section 363 of the Bankruptcy Code (the “Sale”) to the Stalking Horse Bidder or other successful bidder (the “Successful Bidder”) at an auction (the “Auction”), the Debtors filed a motion (the “Motion”),² seeking, among other things, (i) entry of an order (the “Bidding Procedures Order”) approving the bidding procedures (the “Bidding Procedures”) governing the solicitation of higher or better Bids; (ii) establishing procedures for the assumption or assignment and assumption of executory contracts; (iii) scheduling a Sale Hearing; and (iv) granting related relief [D.I. 25].

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion or the Bidding Procedures Order, as applicable.

4. Pursuant to the Sale and the APA, the Debtors will assume the Designated Contracts (as defined herein) pursuant to and upon the consummation of the Sale with the Successful Bidder continuing to perform under the applicable Designated Contract. The Debtors will assume and assign the Designated Contracts to the applicable Successful Bidder, pursuant to the Sale Order to be entered approving the Sale following the Sale Hearing.

5. Pursuant to the Bidding Procedures Order [D.I. ___], the Debtors hereby provide notice that they are seeking to assume and assign to the Successful Bidder the executory contracts or unexpired leases (each, a “Designated Contract”) listed on **Exhibit A** attached hereto.

6. On the closing date of the Sale, or as soon thereafter as practicable, the Successful Bidder or the Debtors (as applicable), will pay you the Debtors’ good-faith estimates of the amount of the required cure payments, as set forth on **Exhibit A** (the “Cure Amount”). The payment of your Cure Amount by the Successful Bidder or the Debtors, as applicable, shall (i) constitute a cure of all defaults existing under your executory contract(s) or expired lease(s), as applicable, and (ii) compensate you for any actual pecuniary loss to such counterparty resulting from such default.

7. The inclusion of an executory contract or unexpired lease as a Designated Contract on **Exhibit A** is not a guarantee that such contract or unexpired lease will ultimately be assumed and assigned. Should it be determined that the Designated Contract to which you are a party will not be assumed and assigned, you will be notified in writing of such decision.

~~8. The Debtors may designate, up to and including at the Sale Hearing (the “Designation Deadline”), additional executory contracts and/or unexpired leases as agreements to be assumed by the Debtors and assigned to the Successful Bidder (the “Additional Designated Contracts”). As soon as practicable, the Debtors shall serve a Contract Assumption Notice on each of the counterparties to such Additional Designated Contracts and their counsel of record, if any, indicating (i) that the Debtors intend to assume and assign the counterparty’s executory contract or unexpired lease to the Successful Bidder, (ii) any assignee, and (iii) the corresponding estimated Cure Amount.~~

~~9. The Debtors may remove any executory contract or unexpired lease, as applicable, to be assumed by the Debtors and assigned to the Successful Bidder (the “Eliminated Agreements”) through and including the Designation Deadline. The Debtors shall, as soon as reasonably practicable after identifying an Eliminated Agreement, serve a notice on each of the impacted counterparties and their counsel of record, if any, indicating that the Debtors no longer intend to assume and assign the counterparty’s executory contract or unexpired lease to the Successful Bidder in connection with the Sale.~~

~~8.~~ ~~10.~~ Although the Debtors ~~intended~~intend to make a good-faith effort to identify all Designated Contracts that may be assumed and assigned in connection with a Sale, the Debtors may discover that certain executory contracts were inadvertently omitted from the Designated Contracts list, or the Successful Bidder may identify ~~other~~additional executory contracts that they desire to assume and assign in connection with the Sale. Accordingly, ~~notwithstanding any provision herein to the contrary,~~ the Debtors reserve the right at any time

after the ~~Designation~~Assumption and Assignment Service Deadline and before the ~~closing of~~ a date that is two (2) days prior to the Sale Hearing, to (i) supplement the list of Designated Contracts with previously omitted executory contracts, (ii) remove Designated Contracts from the list of executory contracts ultimately selected as Designated Contracts that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated Cure Amount associated with any Designated Contracts. In the event the Debtors exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of contract assumption and assignment (a “Supplemental Assumption Notice”) on each of the counterparties to such Designated Contracts and their counsel of record, if any; *provided, however*, the Debtors may not add an executory contract to the list of Designated Contracts that has been previously rejected by the Debtors by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Designated Contracts as was included in the Contract Assumption Notice.

9. The Debtors may remove any executory contract or unexpired lease, as applicable, to be assumed by the Debtors and assigned to the Successful Bidder (the “Eliminated Agreements”) through and including the Designation Deadline. The Debtors shall, as soon as reasonably practicable after identifying an Eliminated Agreement, serve a notice on each of the impacted counterparties and their counsel of record, if any, indicating that the Debtors no longer intend to assume and assign the counterparty’s executory contract or unexpired lease to the Successful Bidder in connection with the Sale.

10. ~~11.~~ Objections, if any, to the Motion and the sale of the Assets to a Successful Bidder, with the exception of objections solely related to the identity of the Successful Bidder, any changes to the form APA, and adequate assurance of future performance by the Successful Bidder, ~~must be made by March 16, 2020, at 10:00 a.m. (EDT).~~ Objections as well as objections to the conduct of the Auction, the proposed Sale to the Successful Bidder, and the ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance, with respect to the assumption and assignment of any Designated Contracts, must be made ~~by~~prior to or at the hearing scheduled for March 19, 2020, at 10:00 a.m. (EDT). In each case, all objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court no later than the applicable objection deadline and served on (i) proposed counsel to the Debtors and (ii) counsel to the Stalking Horse Bidder. *Any party who fails to timely file an objection to entry of the Sale Order (i) shall be forever barred from objecting thereto, (ii) shall be deemed to consent to the sale of the Assets as approved by any Sale Order, and (iii) shall be deemed to “consent” for purposes of Section 363(f)(2) of the Bankruptcy Code.*

11. ~~12.~~ Objections, if any, to the proposed assumption and assignment or the Cure Amount proposed with respect thereto *must* (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served upon counsel to the

Debtors and counsel to the Stalking Horse Bidder so as to be actually received by on or at the hearing scheduled for March 16~~20~~, 2020, at 10:00 a.m. (EDT), ~~or such deadline set forth in the applicable Supplemental Assumption Notice~~. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment solely with respect to the adequate assurance of future payment from the Successful Bidder (the “Buyer Identity Objection Deadline”) shall be ~~extended to~~ prior to or at the hearing scheduled for March 19~~20~~, 2020, at 10:00 a.m. (EDT).³; ~~provided, however, that the deadline to object to the Cure Amount or other matters unrelated to the identity of the Successful Bidder shall not be extended.~~

12. ~~13.~~ The objection deadline for counterparties who receive a Supplemental Assumption Notice (“Supplemental Counterparties”) shall be the earlier of: (a) 10:00 a.m. (EDT) on the date that is five (5) days from filing and service of such Supplemental Assumption Notice and (b) the Sale Hearing. Notwithstanding the foregoing, the Buyer Identity Objection Deadline shall not be extended for Supplemental Counterparties.

13. ~~14.~~ If an objection to the Cure Amount or assumption and assignment is timely filed and not resolved by the parties, a hearing with respect to the objection will take place before the Honorable Laurie Selber Silverstein of the United States Bankruptcy Court for the District of Delaware, 824 Market St. N., 6th Floor, Courtroom #2, Wilmington, Delaware 19801 at the Sale Hearing to be held **on March 20, 2020, at 10:00 a.m. (EDT)**. A hearing regarding the Cure Amount, if any, may be continued at the discretion of the Debtors and the Successful Bidder until after the closing.

14. ~~15.~~ If there is a timely objection to a Cure Amount, any undisputed portion of such Cure Amount will be paid in accordance with these Assumption Procedures and such payment will not be withheld pending resolution of any such objection; *provided that* the Stalking Horse Bidder shall be obligated only to pay the Cure Amounts as set forth in the Stalking Horse APA.

15. ~~16.~~ Any party that does not timely object to the Cure Amount, the proposed assumption and assignment of a Designated Contract or Additional Designated Contract listed on the Contract Assumption Notice or Supplemental Assumption Notice, or any Sale is deemed to have consented to (a) such Cure Amount, (b) the assumption and assignment of such Designated Contract or Additional Designated Contract (including the adequate assurance of future payment), (c) the related relief requested in the Motion, and (d) the Sale. **Such party shall be forever barred and estopped from objecting to the Cure Amount, the assumption and assignment of the Designated Contract, or Additional Designated Contract, adequate assurance of future performance, the relief requested in the Motion,**

³ The Debtors will file, as promptly as possible after the close of the Auction, but, in any event by March 18, 2020, at 12:00 p.m. (EDT), a Notice of Successful Bidder (as defined in the Motion). The Debtors will also transmit the Notice of Successful Bidder via email and fax, where available, to the counterparties to the Designated Contracts and post the Notice of Successful Bidder on the claims and noticing agent’s case-dedicated website at <http://www.kccllc.net/valeritas>.

and the Sale, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Successful Bidder and/or the Debtors, for purposes of section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other amounts against the Debtors or the Successful Bidder, as applicable, with respect to such party's Designated Contract or Additional Designated Contract.

16. ~~17.~~ After the Auction (if any), the Debtors will file a notice that identifies the Successful Bidder. The Debtors and/or any Successful Bidder reserve all of their rights, claims and causes of action with respect to the contracts and agreements listed on **Exhibit A** hereto. Notwithstanding anything to the contrary herein or in the Motion, the Bidding Procedures, or the Bidding Procedures Order, service of this Contract Assumption Notice does not constitute an admission that any contract is an executory contract, that any lease is unexpired, or that the stated Cure Amount related to any executory contract or unexpired lease constitutes a claim against the Debtors or establishes any rights against any Successful Bidder (all rights with respect thereto being expressly reserved); *provided further*, that, following the Auction, the Successful Bidder or the Debtors, as applicable, reserve all rights to assert that any Cure Amount is lower than the Debtors' estimate, subject to each counterparty's opportunity to object.

17. ~~18.~~ **The inclusion of a contract or unexpired lease on this Contract Assumption Notice is not a guarantee that such contract or unexpired lease will ultimately be assumed and assigned.**

Dated: March __, 2020
Wilmington, Delaware

DLA PIPER LLP (US)

/s/ DRAFT

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Proposed Counsel to Debtors and Debtors in Possession

Summary report:	
Litéra® Change-Pro TDC 10.1.0.700 Document comparison done on 3/6/2020 3:07:59 PM	
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